

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

2015 AUG 19 PM 2:10

DEPUTY CLERK

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**PAUL TOPPER, et ux,
BRENDA TOPPER,
Plaintiffs,**

V.

**CHRISTOPHER ADAM VILLARREAL,
INDIVIDUALLY AND TANKSTAR
USA, INC. AND SCHWERMAN
TRUCKING CO.,**

[illegible]**CV**

2-15 CV-257-J

ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME, PAUL TOPPER and wife, **BRENDA TOPPER**, hereinafter called Plaintiffs, complaining of and about **CHRISTOPHER ADAM VILLARREAL**, hereinafter called Defendant, and **TANKSTAR USA, INC.** and **SCHWERMANN TRUCKING CO.**, hereinafter called Co-Defendants and for cause of action would respectfully show this Honorable Court the following:

A. PARTIES AND SERVICE

1. Plaintiffs, **PAUL TOPPER** and **BRENDA TOPPER**, are individuals that are citizens under the laws of the State of Texas and whose address is 7022 Co. Rd. 15A, P. O. Box 582, Wheeler, Texas 79096.

2. Defendant, **CHRISTOPHER ADAM VILLARREAL**, is an individual that is a citizen under the laws of the state of Texas, and may be served with process at 303 Irene, Plainview, Texas.

3. Co-Defendant, **TANKSTAR USA, INC**, is a corporation that is incorporated

under the laws of the State of Wisconsin. Co-Defendant has its principal place of business in the State of Wisconsin. Co-Defendant has a registered agent for service of process in the State of Texas. Service of process on defendant may be made according to the laws of the State of Texas by serving CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136. Your Plaintiffs request that citation issue from the district clerk of the United States District Clerk-Northern Division by certified mail, return receipt requested.

4. Co-Defendant, **SCHWERMEN TRUCKING CO.**, is a corporation held by Defendant, **TANKSTAR USA, INC.**, a corporation that is incorporated under the laws of the State of Wisconsin. Co-Defendant has its principal place of business in the State of Wisconsin. Co-Defendant has a registered agent for service of process in the State of Texas. Service of process on defendant may be made according to the laws of the State of Texas by serving CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136. Your Plaintiffs request that citation issue from the district clerk of the United States District Clerk-Northern Division by certified mail, return receipt requested.

B. JURISDICTION AND VENUE

5. The Court has jurisdiction over the lawsuit under 28 U.S.C. §1332(a)(1);(c)(1) because Plaintiff and **CHRISTOPHER ADAM VILLARREAL**, the individual Defendant, and the corporation Co-Defendants, **TANKSTAR USA, INC. and SCHWERMEN TRUCKING CO.**, are citizens of different U.S. states, and the amount in controversy exceeds \$75,000.00, excluding interests and costs.

6. Venue is proper in this district under 28 U.S.C. §1391(b)(2);(c)(1) because a substantial part of the events or omissions giving rise to this claim occurred in this district and Plaintiffs and Defendant, **CHRISTOPHER ADAM VILLARREAL**, reside in this district.

C. FACTS

7. On or about September 12, 2013, your Plaintiff, **PAUL TOPPER**, was safely stopped on the southbound shoulder of I-27, almost to the McCormick Road exit in Randall County, Texas to secure the bass boat he and his son were hauling on their boat trailer. Your Plaintiff, **PAUL TOPPER**, was in between the boat trailer and the pickup truck he was driving securing the trailer hitch, when he observed the Defendant, **CHRISTOPHER ADAM VILLARREAL**, driving a cement truck southbound on I-27 in the right hand lane. Plaintiff, **PAUL TOPPER**, realized Defendant, **CHRISTOPHER ADAM VILLARREAL**, was driving too fast to stop and was too far to the right to avoid hitting Plaintiff, **PAUL TOPPER'S** boat trailer. Plaintiff was unable to move fast enough to get out of the way and was pinned between his pickup truck, the boat trailer and the guardrail on the right shoulder of I-27 when the Defendant, **CHRISTOPHER ADAM VILLARREAL'S** truck impacted the boat trailer and drove it into the back of the Plaintiff, **PAUL TOPPER'S** pickup. The Defendant, **CHRISTOPHER ADAM VILLARREAL**, then veered left and struck another car in the left hand lane of I-27 and proceeded to roll his truck into the center median.

8. Your Plaintiff, **PAUL TOPPER**, had moved his vehicle and trailer safely off the roadway and was behaving, at all times pertinent hereto, in a reasonable and prudent manner prior to Defendant, **CHRISTOPHER ADAM VILLARREAL**, striking his boat trailer and pickup truck tailgate from behind. As a direct and proximate result of the negligent acts of Defendant, **CHRISTOPHER ADAM VILLARREAL**, Plaintiff, **PAUL TOPPER**, suffered a crush injury described as a "massive parenchymal disruption of spleen without mention of open wound into cavity; Open dislocation of the wrist." Your Plaintiff, **PAUL TOPPER**, never lost consciousness as his guts were squished between the pickup truck and the boat trailer. Plaintiff,

PAUL TOPPER's medical expenses exceed \$80,000.00 and continue to rise. In addition, Plaintiff suffered a significant and substantial amount of pain and suffering as a direct and proximate result of the Defendant, **CHRISTOPHER ADAM VILLARREAL'S** negligence.

**D. PLAINTIFF'S CLAIM OF NEGLIGENCE
AGAINST CHRISTOPHER ADAM VILLARREAL**

9. Defendant, **CHRISTOPHER ADAM VILLARREAL**, had a duty to exercise ordinary care and operate his vehicle reasonably and prudently. Defendant, **CHRISTOPHER ADAM VILLARREAL**, breached that duty in one or more of the following ways:

- a. Failing to timely apply his brakes;
- b. Failing to maintain an assured clear distance between his vehicle and the vehicles parked on the shoulder of I-27;
- c. Failing to control his speed;
- d. Failing to safely stop without colliding with your Plaintiff's vehicle;
- e. Violating the Texas Transportation Code §545.351, which is negligence per se.

10. Each of the foregoing acts of negligence taken singularly or in combination with others was a proximate cause of the damages and injuries suffered by your Plaintiffs.

**E. PLAINTIFF'S CLAIM OF NEGLIGENCE PER SE
AGAINST CHRISTOPHER ADAM VILLARREAL**

11. Defendant, **CHRISTOPHER ADAM VILLARREAL'S**, conduct was negligence per se because Defendant, **CHRISTOPHER ADAM VILLARREAL**, breached a duty imposed by statute, specifically section §545.351 of the Texas Transportation Code which breach caused Plaintiffs' damages. Specifically, Defendant, **CHRISTOPHER ADAM VILLARREAL**, breached one or more of the duties imposed by statute as follows:

§ 545.351. MAXIMUM SPEED REQUIREMENT. a) An operator may not drive at a speed greater than is reasonable and prudent under the circumstances then existing.

(b) An operator:

(1) may not drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for actual and potential hazards then existing; and

(2) shall control the speed of the vehicle as necessary to avoid colliding with another person or vehicle that is on or entering the highway in compliance with law and the duty of each person to use due care.

(c) An operator shall, consistent with Subsections (a) and (b), drive at an appropriate reduced speed if:

(1) the operator is approaching and crossing an intersection or railroad grade crossing;

(2) the operator is approaching and going around a curve;

(3) the operator is approaching a hill crest;

(4) the operator is traveling on a narrow or winding roadway; and

(5) a special hazard exists with regard to traffic, including pedestrians, or weather or highway conditions.

12. Defendant, **CHRISTOPHER ADAM VILLARREAL'S**, unexcused breach of the duty imposed by section §545.351 of the Texas Transportation Code proximately caused the Plaintiffs' injuries described herein.

**F. PLAINTIFF'S CLAIM OF RESPONDEAT SUPERIOR/AGENCY
AGAINST TANKSTAR USA, INC., AND SCHWERMAN TRUCKING CO.**

13. At all times pertinent hereto, Defendant, **CHRISTOPHER ADAM VILLARREAL**, was within the course and scope of employment for Co-Defendant,

SCHWERMEN TRUCKING CO., and its holding company, Co-Defendant, **TANKSTAR USA, INC.**

14. At all times pertinent hereto, Defendant, **CHRISTOPHER ADAM VILLARREAL**, was engaged in accomplishing a task for which Defendant, **CHRISTOPHER ADAM VILLARREAL**, was employed.

15. Plaintiffs invoke the doctrine of Respondeat Superior against Co-Defendant, **SCHWERMEN TRUCKING CO.** and its holding company, Co-Defendant, **TANKSTAR USA, INC.** Defendants, **TANKSTAR USA, INC.** and **SCHWERMEN TRUCKING CO.**, are liable for the negligent acts of their employees while in the course and scope of their employment.

**G. PLAINTIFF'S CLAIM OF NEGLIGENT ENTRUSTMENT AGAINST
TANKSTAR USA, INC. AND SCHWERMEN TRUCKING CO.**

16. Plaintiffs incorporate paragraphs 1-15 the same as if fully copied and set forth at length.

17. Plaintiffs allege that the injuries, harm, and damages were incurred by your Plaintiffs as a result of the truck driven by Defendant, **CHRISTOPHER ADAM VILLARREAL**, in a negligent and reckless manner, which because of youth, inexperience, and prior actions, these Defendants knew, or had reason to know, was likely and involved an unreasonable risk of harm to others while driving a truck.

18. Defendants, **TANKSTAR USA, INC.** and **SCHWERMEN TRUCKING CO.**, as the employer of Defendant, **CHRISTOPHER ADAM VILLARREAL**, had the right to permit and the power to prohibit the use of the truck by **CHRISTOPHER ADAM VILLARREAL**.

19. Defendants, **TANKSTAR USA, INC.** and **SCHWERMEN TRUCKING CO.**,

knew, or had reason to know, that Defendant, **CHRISTOPHER ADAM VILLARREAL** because of youth, inexperience, and/or prior actions, was likely to operate his truck in a negligent and/or reckless manner.

20. As a direct result of Defendants, **TANKSTAR USA, INC.** and **SCHWERMAN TRUCKING CO.** negligently entrusting Defendant, **CHRISTOPHER ADAM VILLARREAL**, who operated said truck in a negligent and/or reckless manner, Plaintiff, **PAUL TOPPER**, without any contributory negligence did suffer the injuries, damages, and harm previously set forth in this Complaint.

H. PLAINTIFF'S CLAIM OF NEGLIGENT HIRING AND ENTRUSTMENT AGAINST TANKSTAR USA, INC. AND SCHWERMAN TRUCKING CO.

21. Plaintiffs incorporate paragraphs 1-20 the same as if fully copied and set forth at length.

22. Defendants, **TANKSTAR USA, INC.** and **SCHWERMAN TRUCKING CO.**, had a duty to use reasonable care to select an employee who was competent and fit to perform the duties required as an employee. Defendants, **TANKSTAR USA, INC.** and **SCHWERMAN TRUCKING CO.**, owed this duty to your Plaintiffs and such duty was breached.

I. DAMAGES FOR PLAINTIFF, PAUL TOPPER

23. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, **PAUL TOPPER**, was caused to suffer irreparable physical damage by the loss of his spleen which had ruptured and had to be removed, and multiple external and internal physical injuries and to incur the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, **PAUL TOPPER**, for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Potter and Randall County, Texas;

- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;
- E. Physical impairment in the past;
- F. Physical impairment which, in all reasonable probability, will be suffered in the future;
- G. Loss of earnings in the past;
- H. Loss of earning capacity which will, in all probability, be incurred in the future;
- I. Loss of Consortium in the past, including damages to the family relationship, loss of care, comfort, solace, companionship, protection, services, and/or physical relations;
- J. Loss of Consortium in the future including damages to the family relationship, loss of care, comfort, solace, companionship, protection, services, and/or physical relations;
- K. Mental anguish in the past;
- L. Mental anguish in the future; and
- M. Cost of medical monitoring and prevention in the future.

24. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, **BRENDA TOPPER**, has suffered a loss of consortium in the past and future including damages to the family relationship, loss of care, comfort, solace, companionship, protection, services, and/or physical relations.

H. EXEMPLARY DAMAGES FOR PLAINTIFF, PAUL TOPPER

25. Defendant, **CHRISTOPHER ADAM VILLARREAL'S**, acts or omissions described above, when viewed from the standpoint of **CHRISTOPHER ADAM**

VILLARREAL at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff, **PAUL TOPPER**, and others. Defendant, **CHRISTOPHER ADAM VILLARREAL**, had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff, **PAUL TOPPER**, and others.

26. Based on the facts stated herein, Plaintiff, **PAUL TOPPER**, requests exemplary damages be awarded to Plaintiff, **PAUL TOPPER**, from Defendant, **CHRISTOPHER ADAM VILLARREAL** and Co-Defendants, **TANKSTAR USA, INC. and SCHWERMEN TRUCKING CO.**

I. JURY DEMAND

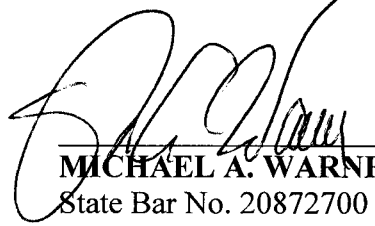
27. Plaintiffs, **PAUL TOPPER** and wife, **BRENDA TOPPER**, assert their rights under the Seventh Amendment to the U.S. Constitution and demand, in accordance with Fed. R. Civ. P 38, a trial by jury on all issues.

K. PRAYER

28. For these reasons, your Plaintiff, **PAUL TOPPER** and wife, **BRENDA TOPPER**, ask for judgment against Defendant, and Co-Defendants, **TANKSTAR USA, INC.** and **SCHWERMEN TRUCKING CO.**, jointly and severally for the following:

- a. Actual damages in an amount not to exceed the sum of \$2,500,000.00.
- b. Prejudgment and postjudgment interest at the highest rate allowed by law.
- c. Exemplary damages.
- d. Costs of suit.
- e. All other relief the Court deems appropriate.

Respectfully submitted,



MICHAEL A. WARNER
State Bar No. 20872700
BRENT C. HUCKABAY
State Bar No. 24085879

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Tele: 806.372.2595
Fax: 866.397.9054

ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Paul Topper, Brenda Topper

DEFENDANTS

Christopher Adam Villareal
TANKSTAR USA, Inc. and Schweeman Trucking Co.

(b) County of Residence of First Listed Plaintiff

Wheeler

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

WARNER LAW FIRM
101 SE 11th St. SU
Annville, TX 79101

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|-------------------------------------|--------------------------|---|--------------------------|-------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen of Another State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> | <input type="checkbox"/> | Foreign Nation | <input type="checkbox"/> | <input type="checkbox"/> |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

MVA - personal injuries

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 250,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED PENDING OR CLOSED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 8-19-15

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE